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Supreme Court of the United States.

OCTOBER TERM, 1959.

No. 432

ANGUS M. MacNEIL,
Appellant,

v.

JESSE W. MORTON AND JUSTICES OF THE SUPERIOR COURT,
Appellees.

APPELLEES' MOTION TO DISMISS APPEAL

AND

BRIEF IN SUPPORT.

EDWARD J. McCORMACK, JR.,
Attorney General,
RICHARD H. GENS,
Assistant Attorney General,
WILLIAM F. LONG, JR.,
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APPELLEES' MOTION TO DISMISS APPEAL.

To the Honorable the Justices of the Supreme Court of the United States:

Now come the appellees in the above-entitled cause and move that the appeal entered by the appellant therein be dismissed upon the following facts and grounds:

The appellant's claim is based upon a decision of a Single Justice of the Supreme Judicial Court of Massachusetts, whose action was later affirmed by the Full Court. The demurrer so sustained was filed in opposition to a petition for writ of mandamus directed to a Justice of the trial court, ordering him to permit the appellant to prosecute an action pending before such trial court, the appellant not being a party to said action and having been disbarred by order of the Supreme Judicial Court of Massachusetts, prior to said action.

As heretofore stated, the action of the trial court was sustained; and the resulting sequence of events is adequately described in the rescript of the Supreme Judicial Court of Massachusetts: *MacNeil* v. *Superior Court*, 1959 Mass. Advance Sheets 1002, handed down May 27, 1959, a full copy of which is printed as an appendix to this brief.

Upon the foregoing facts, and all facts presented to this Court by the papers which have been transmitted to it by the appellant, the appellees herein rest this their motion to dismiss upon the following grounds:

1. That the appeal presents no substantial federal question.

2. That no federal question sought to be reviewed was expressly passed on by the Supreme Judicial Court of Massachusetts.

3. That the judgment of the Supreme Judicial Court of Massachusetts rests upon an adequate non-federal basis.

EDWARD J. McCORMACK, JR.,
Attorney General,
RICHARD H. GENS,
Assistant Attorney General,
WILLIAM F. LONG, JR.,
Assistant Attorney General.

BRIEF IN SUPPORT OF APPELLEES' MOTION TO DISMISS APPEAL.

The appellees in the above-entitled cause respectfully submit this brief in support of their motion to dismiss herein.

Opening Statement.

The appellant was duly admitted to practise before the bar of this Commonwealth as an attorney. Subsequently the Supreme Judicial Court, Williams, J., entered an order removing the name of the appellant from the roster of attorneys practising before the courts of Massachusetts. On August 1, 1958, the appellee, Jesse W. Morton, Justice of the Superior Court, refused to permit the appellant to appear and argue a case marked for hearing before him on said date on the basis that the appellant had no right or standing to so appear.

The appellant brought a petition for a writ of mandamus to compel the appellees to permit said appellant to practise law within the Commonwealth. The appellees demurred to the petition on the ground that it did not set forth facts sufficient to warrant the relief sought. After hearing, the demurrer was sustained by the Full Bench of the Supreme Judicial Court of Massachusetts.

Argument.

I. No Substantial Federal Question is Presented.

The decision of the Supreme Judicial Court of Massachusetts (see Appendix) is concerned solely with a procedural

matter. The decision did not deny to the appellant any right of review of the action of the trial judge had the question been presented to the Court in a proper manner. It is within the power of the Supreme Judicial Court of Massachusetts to permit review upon such terms, conditions, and procedural requirements as it may reasonably require.

Honeyman v. *Hanan*, 302 U.S. 375.
National Union of Marine Cooks and Stewards v. *Arnold*, 348 U.S. 37.
Reetz v. *Michigan*, 188 U.S. 505, 508.
Dohany v. *Rogers*, 281 U.S. 362, 369.

It does not appear from the record in this case that the Supreme Judicial Court of Massachusetts applied to this appellant any order, rule or requirement other than those that would be applied to all persons similarly situated and presenting like questions.

Lisenba v. *California*, 314 U.S. 219, 226.

The allegation in the jurisdictional statement of the appellant relating to "the abuses so prevalent in the Courts of Massachusetts and which he has vigorously but honorably opposed contrary to the desires of certain members of the judiciary," together with excerpts from opinions of this Honorable Court taken out of context, do not reveal that such matters were before the Supreme Judicial Court of Massachusetts or in any way affected the decision of said Court of what was, in effect, strictly a procedural problem.

Rines v. *Justices of Superior Court*, 330 Mass. 368; s.c. 346 U.S. 919; rehearing denied, 347 U.S. 908.

II. No Federal Question Sought to be Reviewed was Expressly Passed on by the Supreme Judicial Court of Massachusetts.

The decision in *MacNeil* v. *Superior Court*, 1959 Mass. Advance Sheets 1002, clearly indicates that the single question presented for determination by the Full Bench of the Supreme Judicial Court of Massachusetts related purely and simply to a procedural matter. The opinion did not arbitrarily deny or intimate that the appellant's case was in any way finally determined on the merits; on the contrary, it is reasonable to assume that, if the issues attempted to be raised by the appellant had been properly raised procedurally, they would have been determined according to the usual course.

Booker v. *Fidelity Trust Co.*, 261 U.S. 114, 117.
Live Oak Water Users' Association v. *Railroad Commission of California*, 269 U.S. 354, 357.

III. The Decision of the Supreme Judicial Court of Massachusetts Rests on an Adequate Non-Federal Basis.

It is uniformly held that for one to hold himself out as a practising attorney after he has been disbarred is a contempt of the court which disbarred him.

Bowles v. *Laws*, 50 Fed. 2d 848, 851.
See cases collected, Note, 100 A.L.R. 236; Note, 36 A.L.R. 533.

It is to be noted on this record that the question of the right of the appellant to appear as attorney for a third party following disbarment was not raised or passed upon

by the Supreme Judicial Court of Massachusetts. As indicated herein, the sole question decided related to the procedure adopted by the appellant in an attempt to present the questions raised in the present appeal.

The jurisdictional statement filed by the appellant fails to disclose any facts upon which it can be determined whether the appellant was appearing personally in behalf of a personal proprietory interest, or whether, on the other hand, he was acting for a third party. The record of the trial court discloses that he was appearing for a third party.

It is submitted that the motion herein should be granted and the appeal dismissed.

Respectfully submitted,

EDWARD J. McCORMACK, JR.,
Attorney General,

RICHARD H. GENS,
Assistant Attorney General,

WILLIAM F. LONG, JR.,
Assistant Attorney General.

Appendix.

Rescript of the Supreme Judicial Court of Massachusetts.

Angus M. MacNeil v. Superior Court. May 27, 1959. Order sustaining demurrer affirmed. Petition dismissed. To this petition for a writ of mandamus a demurrer was sustained by a single justice, and the petitioner appealed. The purpose of the petition is to compel the respondents to permit the petitioner to practise law before them. The petition alleges that the petitioner has been disbarred by a single justice of the Supreme Judicial Court. There was no error. Mandamus cannot be used as a substitute for ordinary appellate procedure. *Rines* v. *Justices of the Superior Court*, 330 Mass. 368, 371-372. *MacNeil Bros. Co.* v. *Superior Court*, 337 Mass.—(Mass. Adv. Sh. [1958] 905).

Angus M. MacNeil, pro se.

Richard H. Gens, Assistant Attorney General, for the respondent.